

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 8035/DEL/2019 (A.Y 2014-15)

Athena Infrastructure Ltd., M-62 & 63, FF, Connaught Place, New Delhi – 110 001. PAN No. AAFCA8602G (APPELLANT)	Vs.	Addl. CIT, Range : 3, New Delhi. (RESPONDENT)
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Assessee by :	Shri Laxmi Narayan Agarwal, Adv.; & Shri Nipun Jain, C. A.;
Department by:	Shri Kanv Bali, Sr. D.R.;

Date of Hearing	24.01.2023
Date of Pronouncement	06.02.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2014-15 against the order of the Id. Commissioner of Income Tax (Appeals)-1, New Delhi, dated 07.08.2019.

2. The assessee has raised the following substantive grounds of appeal :-

“1. The Hon’ble CIT (A) erred on facts and circumstances of the case in confirming addition u/s 68 made by Assessing Officer amounting to Rs.11,181,536/-.

2. The Hon’ble CIT (A) erred on facts and circumstances of the case in not allowing the deduction of dividend income amounting to Rs.1,524,221/- being the income credited to inventory and claimed on proportionate basis.”

3. Brief facts of the case are that, the assessee filed its return for the Assessment Year 2014-15 declaring income of Rs. 85,37,59,040/- under normal taxation and Rs.87,14,66,112/- as book profit under MAT. The case of the assessee was selected for scrutiny and assessment proceedings have been initiated. Assessment order came to be passed on 16/12/2016 by making addition of Rs. 1,11,81,536/- u/s 68 of the Act and a sum of Rs. 15,24,221/- made on wrong deduction of dividend income, made addition of un-reconciled amount of Rs. 4,22,500/-, further made addition of Rs. 1,850/- on account of late deposition of welfare fund.

4. As against the assessment order dated 16/12/2016 the assessee has preferred an appeal before the Ld.CIT(A). the Ld.CIT(A) vide order dated 07/08/2019 sustained the addition made u/s 68 of the Act amounting to Rs.

1,11,81,536/- and also sustained additions made on dividend income amounting to Rs. 15,24,221/-.

5. Aggrieved by the order dated 07/08/2019, the assessee has preferred the present appeal.

Ground No.1

6. The Ground No. 1 is in respect of addition made u/s 68 of the Act to the tune of Rs. 1,11,81,536/-. During the assessment proceedings the assessee was asked to file details of advance from customers accordingly, the assessee filed details showing advance received from customers as on 31/03/2014. The Ld. A.O. found that the details of advance received from the customer as on 31/03/2014 which is not complete details. Therefore, asked the assessee to submit the financial of the Companies which are appearing in the list of persons who had booked unit in the Assessee's project. The Ld. A.O. was of the opinion that the balance sheet of Assessment Year 2014-15 and Assessment Year 2013-14 does not support the worthiness of the Companies i.e. M/s Array Export and Investment Pvt. Ltd. and M/s MMB Steel India Pvt. Ltd. to give advance up to the extent claimed by the assessee

7. It is the specific case of the assessee is that the advance has been received by the assessee towards the sale of the flat and the same will be handed over only on the receipt of full amount of sale price. Therefore, the

assessee has not verified the creditworthiness of the parties making the booking as a customer can make the booking through its own funds as well as borrowed funds, thus produced financial statements, but did not produce the portion certificate and also submitted copies of the financial statement of the companies as extracted from ROC Website. The Ld. A.O. was not satisfied with the clarifications given by the assessee and made addition of Rs. 1,11,81,536/- as unexplained cash credit u/s 68 of the Act and added back to the income of the assessee. The said addition made by the A.O. has been confirmed by the Ld.CIT(A).

8. Before us, the Ld. AR has produced several documents to prove the genuineness of the transaction such as ledger of Array Export and Investment Pvt. Ltd. and MMB Steel India Pvt. Ltd. which reflects that the amount has been paid in installments in stage by stage depending upon the construction of the building. Further assessee has also produced flat buyers agreement at Annexure-3 & 4 respectively in respect of Array Export and Investment Pvt. Ltd. and MMB Steel India Pvt. Ltd. The Ld. AR has also filed order passed by the Haryana Real Estate Regulatory Authority, Gurgaon wherein the Array Export has filed a Complaint No. 4554/2020 which has been allowed by the authority on 20/07/2021 with certain directions in respect of the Flat agreed to be purchased by Array Export and Investment Pvt. Ltd. We have perused the above documents and satisfied that the amount has been paid by the two

parties i.e. Array Export and Investment Pvt. Ltd. and MMB Steel India Pvt. Ltd. as advanced sale consideration for purchase of Flat which has been conclusively proved by the assessee. Therefore, in our opinion, the addition made by the Ld. A.O. u/s 68 of the Act to the tune of Rs. 1,11,81,536/- is not called for. Accordingly, the addition made by the A.O. which was sustained by the Ld.CIT(A) u/s 68 of the Act is hereby deleted, the Ground No. 1 of the assessee is allowed.

Ground No. 2

9. The Ground No. 2 of the assessee is in respect of not allowing the deduction of dividend income amounting to Rs. 15,24,221/-. The Ld. A.O. on perusal of the assessee's computation of income found that the assessee had decreased the dividend on unit of mutual fund/shares (offered for tax earlier) as cost of sales. When the assessee was confronted by the A.O., the assessee had made a reply stating that "the assessee has earned divided income in previous year and credited the same into inventory and offered for tax in respective years although the dividend income was exempt. The said amount has been deducted in the computation in the ratio of cost of goods sold". The Ld. A.O. was of the opinion that the tax exempt income even if not inventorised earlier would not had yielded any tax. Therefore, made addition of Rs. 15,24,221/-.

10. The Ld. CIT (A) has dealt with the above issued in detail during the appeal proceedings and rejected the claim of the assessee in following manners:

“7.2 During the course of appellate proceedings, Ld. AR has stated that during the Financial Year 2009-10 and 2010-11, the appellant had earned exempt dividend income amounting to Rs. 6,173,433/-. Ld. AR has argued that for accounting purposes, carrying amount of inventory (i.e. Project WIP) was reduced by the said income. However, for tax purposes, considering the nature of income, carrying amount of inventory was to be enhanced by the said amount. Ld. AR has stated that in order to give effect to the above, during the year under consideration, cost of sales, was enhanced and consequential benefit was claimed for an amount of Rs.15,24,221/-, which is in proportion to the percentage of project completed. Ld. AR has stated that from the above discussion, it is evident that the appellant is duly eligible to reduce the amount of dividend, while computing taxable income as the same is ultimately exempt u/s 10(34) of Income Tax Act, 1961. in the assessment order, the AO has stated that the appellant company had decreased the dividend on units of mutual fund/shares (offered for tax earlier) as cost of sales. The appellant company was confronted by the AO that the benefit of the amount which is tax exempt cannot be taken again. In this regard the AO has observed that the tax exempt income even if not inventoried earlier would not have yielded any tax. Accordingly, the AO has made an addition of Rs. 15,24,221 /- to the income of the appellant company. Considering the facts of the case, I am of the view that there is no merit in the submission of the

appellant company. Accordingly, the addition of Rs. 15,24,221/- to the income of the appellant company is upheld. Ground No. 2 is decided against the appellant.”

11. During the assessment proceedings the Ld. A.O. found that the assessee company had decreased the dividend on unit of mutual funds/shares (offered for tax earlier) as cost of sale. The assessee was also confronted by the A.O. that the benefit of the amount which is taxed exempt cannot be taken again. In this regard, the A.O. has observed that tax exempt income even if not inventorised earlier would not have yielded any tax. Therefore, made the addition which was sustained by the Ld. CIT(A). Considering the facts of the case, we do not find any error or infirmity in the approach of the Lower Authorities and we find no merit in Ground No. 2 of the Assessee. Accordingly, Ground No. 2 of the Assessee is dismissed.

12. In the result, Appeal of the Assessee is partly allowed.

Order pronounced in the open court on : **06 /02/2023.**

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated : 06/02/2023

MEHTA/R.N, PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI